IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WP(C).No. 35178 of 2005(K)

OS.1/2004 of SUB COURT, KASARAGOD

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PETITIONER:

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1. RAVINDRANATHA RAI, S/O.VISWANATHA RAI,
   R/AT BANARI HOUSE, ADKATHOTTY,
   PUTHIGE VILLAGE, KASARAGOD TALUK.

2. ABBAKKE.V.RAI, W/O.VISWANATHA RAI,
   R/AT BANARI HOUSE, ADKATHOTTY, PUTHIGE VILLAGE,
   KASARAGOD TALUK.

3. THARA V.HEGDE, W/O.VISWANATHA HEGDE,
   R/AT NEAR SOVEREIGN SNUFF WORKS,
   GANDHI MAIDAN ROAD, KARKALA TALUK,
   UDUPI DISTRICT, KARNATAKA STATE.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENTS:

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1. VASANTHI RAI.K., W/O.CHIKKAPPA RAI.

2. YASHAWANTHA KUMAR RAI,
   S/O.CHIKKAPPA RAI.

3. RANJAN KUMAR RAI, S/O.CHIKKAPPA RAI,
   1 TO 3 RESPONDENTS ARE R/AT BANARI HOUSE,
   ADKATHOTTY, PUTHIGE VILLAGE, KASARAGOD TALUK.

*4. NITHIN KUMAR.K., S/O.CHIKKAPPA RAI,
   R/AT 73/22 HARIKRIPA OUT HOUSE, BASCKYARD,
   5TH MAIN 3RD BLOCK, BULL TEMPLE ROAD,
   TR NAGAR, BANGALORE-28.

*5. KASTHURI, W/O.THIMMANNA RAI,
   MUNIYOOR HOUSE, BADIADKA VILLAGE,
   PERDALA P.O., KASARAGOD.

*6. CHANDRAKALA R.SHETTY,
W/O.RAMESHA SHETTY, DEVARAGUTTU,
NETTANNIGE HOUSE, NETTANNIGE, P.O.MULLERIA,
VIA, KASARAGOD DISTRICT.

* 7. JAYALAKSHMI N.ALVA,
W/O.NAGESH ALVA, TARDOLIA HOUSE,
P.O.JAPPINA MOGARU, MANGLORE TALUK,
DAKSHINA KANNADA DISTRICT, KARNATAKA STATE.

*8. SOMAVATHI.K. ALVA,
W/O.KAMALAKSHA ALVA, NIDDAMBADY HOUSE,
ICHALAMPADY P.O., KASARAGOD.

*9. MAINDAPPA RAI, NIDDAMBADY HOUSE,
ICHALAMPADY P.O., KASARAGOD.

*10. KOCHANNA RAI, PADDAMBAIL HOUSE,
P.O.PERLTHADKA, KATTUKUKKE VILLAGE,
KASARAGOD.

*11. HEMAVATHI M.RAI, W/O.MAHABALA RAI,
PADDAMBAIL HOUSE, P.O.PERLTHADKA,
KATTUKUKKE VILLAGE, KASARAGOD.

*12. LEELAVATHI B.SHETTY,
W/O.BALAKRISHNA RAI, KRITHI NILAYA,
MUPPERIYA HOSAMANE, P.O.MUPPERIA,
BALLARE VIA, SULLIA TALUK, KARNATAKA STATE.

*13. PUSHPAVATHI B.SHETTY,
W/O.B.BABU SHETTY, PERAL HOUSE,
P.O.MOGRAL, KUMBALA VIA, KASARAGOD DISTRICT.

*14. SATYAVATHI H POONJA,
W/O.HARISH POONJA, ALIMARU HOUSE,
ADARSH NAGER P.O.NEKKILADY, UPPINANGADI VILLAGE,
PUTTUR TALUK, DAKSHINA KANNADA DISTRICT,
KARNATAKA STATE.

*15. KEERTHIKALA L.SHETTY,
W/O.LOKANATHA SHETTY, MAILENGI HOUSE P.O.,
PERLATHADKA, KATTUKUKKE VILLAGE, PERLA VIA,
KASARAGOD.

*R4 TO R15 DELETED AS PER THE ORDER DT. 30.1.06 IN THE WRIT PETITION.

R1 TO R3 BY ADV. SRI.L.GOPALAKRISHNAN POTTI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 35178/05)

PETITIONERS EXTS.:

EXT.P1: TRUE COPY OF THE FAMILY ARRANGEMENT DT. 29.10.06 BY THE 1ST RESPONDENT BEFORE THE SUBORDINATE COURT, KASARAGOD.

EXT.P2: TRUE COPY OF THE PLAINT WITH EYE SKETCH IN O.S.NO.1/04.

EXT.P3: TRUE COPY OF THE ORDER IN I.A.782/03 BY THE LAND TRIBUNAL, KASARAGOD.

EXT.P4: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONERS BEFORE THE SUBORDINATE JUDGE, KASARAGOD IN O.S.1/2004.

EXT.P5: TRUE COPY OF THE REPORT FILED BY THE COMMISSIONER BEFORE THE SUBORDINATE COURT, KASARAGOD.

EXT.P5(a): TRUE COPY OF THE REPORT FILED BY THE COMMISSIONER BEFORE THE SUBORDINATE COURT, KASARAGOD.

EXT.P5(b): TRUE COPY OF THE SKETCH FILED BY THE COMMISSIONER BEFORE THE SUBORDINATE COURT, KASARAGOD.

EXT.P6: TRUE COPY OF THE EYE SKETCH BY THE PETITIONER.

EXT.P7: TRUE COPY OF I.A.850/05 IN O.S.1/2004 BY THE PETITIONER BEFORE THE SUBORDINATE COURT, KASARAGOD.

EXT.P8: TRUE COPY OF THE ORDER IN I.A.850/05 IN O.S.1/04 PASSED BY THE SUBORDINATE JUDGE, KASARAGOD.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.35178 of 2005

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Dated: 20th June, 2007

JUDGMENT

Even though Mr.Kodoth Sreedharan, learned counsel for the petitioners is to a certain extent right in submitting that the Commissioner has not executed the works mentioned in the warrant which was given to her by the court, I do not think that this court will be justified in setting aside Ext.P8 under the supervisory jurisdiction of this court under Article 227 of the Constitution in view of the reasoning given by the learned Subordinate Judge as to support his order. In paragraph 9 of the order the learned Subordinate Judge has noticed that on previous two occasions also the commission report was remitted back to the Commissioner. It would have been ideal if the learned Subordinate Judge had appointed a Senior Counsel of that court as Commissioner. But that will not be a reason for setting aside Ext.P8 order. In paragraph 9 of the order the learned Subordinate Judge has further observed that the contentions of the petitioners can very well be proved by adducing evidence and also by cross-examining the Commissioner. In that way the interest of the petitioners is taken care of by the learned Subordinate Judge. I refuse to interfere with Ext.P8 under the supervisory jurisdiction of this court

under Article 227 of the Constitution. I direct the learned Subordinate Judge to proceed with the trial and record the evidence in the suit. After the entire evidence comes on record the parties will be heard on the preliminary question of acceptability or otherwise of the Commissioner's report which was sought to be set aside in the I.A. If the evidence which comes on record shows that the Commissioner's report is bad, then the learned Subordinate Judge will not hesitate to issue fresh commission or to remit the report back to the same Commissioner notwithstanding that the entire evidence in the suit has come on record.

Subject to the above directions/observations, this Writ Petition is disposed of.

srd **PIUS C.KURIAKOSE, JUDGE**